IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 10491 OF 2004

Jafar Hussain Patel ....Petitioner.

V/s

1. Mahabaleshwar Hill Station
and Ors. ....Respondents.

Mr. R.D. Soni i/b M/s. Ram & Co. for the petitioner.
Mr. Ganesh Gole for respondent Nos. 1 and 2.
Mr. C.R. Sonawane, AGP for respondent Nos. 4 and 5.

CORAM: V.G. PALSHIKAR, Acg. C.J. &
V. M. KANADE, J.
DATE : 9th August, 2006.

P.C:

1. By this petition, petitioner is challenging the action of the respondents in rejecting his plan for construction on a plot of land belonging to the petitioner and in existence prior to 1985.

2. The Municipality rejected this plan on the grounds (i) that the plot area did not conform to the minimum requirement as laid down by 1985 Rules and (ii) the building plan was not in accordance with the requirement of

regulations pertaining to construction. This rejection was challenged by the petitioner by way of appeal under section 47 of the M.R.T.P. Act. The appellate authority decided the appeal only on the question of size of plot and the question regarding refusal of permission to construct and aspect whether the Regulations framed in the year 1985 can be made applicable to plots and layouts legitimately existing prior to 1985 Regulations was not considered at all. The appellate authority is a Director of Town Planning Maharashtra State, Pune.

3. In our opinion, ends of justice would be met if the matter is remitted back to the Director of Town Planning, Maharashtra State, Pune for deciding afresh in accordance with law on the following two questions:-

(i) Whether the requirement of revised development plan which was effective from 1/8/1985 would be applied to layout or a plot legitimately existing prior to that date?

(ii) Whether in such circumstances, building permission can be refused for such non-compliance?

The appellate authority is directed to decide the appeal as early as possible, preferably in two months from the date of receipt of this order.

4. Writ Petition is accordingly disposed of.

(V.G. PALSHIKAR, Acg. C.J.)

(V. M. KANADE, J.)